

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Civil Action No. 7:14-CV-00205-FL

UNITED STATES OF AMERICA for the use
and benefit of TQ CONSTRUCTORS, INC.,

Plaintiff,

vs.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, and ENVIRO
AGSCIENCE, INC.,

Defendants.

ENVIRO AGSCIENCE, INC.,

Counterclaim Plaintiff,

vs.

WESTERN SURETY COMPANY

Additional Counterclaim Defendant.

CONSENT ORDER

THIS MATTER comes before the Court upon the Motion To Join Western Surety Company As Additional Counterclaim Defendant (“Motion”) [Dkt # 16] filed by Defendant/Counterclaim Plaintiff ENVIRO AgScience, Inc. (“ENVIRO”), which seeks an order joining Western Surety Company (“Western Surety”) as an additional counterclaim defendant to this action pursuant to Fed. R. Civ. P. 13(h) and 20. The Court has reviewed the Motion, supporting brief and pleadings on file, and finds that ENVIRO’s counterclaim alleges joint and several relief against Defendant TQ Constructors, Inc. (“TQ”) and Western Surety arising out of a surety bond provided by TQ and Western as part of TQ’s work on a construction project at Camp Lejeune. The Court also finds that ENVIRO’s counterclaim against both TQ and Western

Surety is alleged to arise from the same transaction or occurrence, namely TQ's work on the project, and there exist common questions of law or fact pertaining to ENVIRO's claims against TQ and Western Surety. Finally, TQ has indicated that it does not object to Western Surety being added as a party but contends that disputes and claims between TQ and Enviro are to be submitted to arbitration. Therefore, the Court finds that Western Surety should be joined in this action as an additional counterclaim defendant pursuant to Fed. R. Civ. P. 13(h) and 20 and ENVIRO's motion should be granted. This Order does not address whether any claim or dispute should be submitted to arbitration.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED and Western Surety shall be joined in this action as an additional counterclaim defendant. The Clerk shall issue a summons in the name of Western Surety and ENVIRO shall effect service upon Western Surety in accordance with the Federal Rules of Civil Procedure.

This the 26th day of January, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

The Honorable Louise W. Flanagan
United States District Judge for the
Eastern District of North Carolina

WE CONSENT:

ANDERSON JONES, PLLC

s/Todd A. Jones

N.C. State Bar No. 25593

P.O. Box 20248

Raleigh, North Carolina 27619-0248

Telephone: 919-277-2541

Fax: 919-277-2544

E-Mail: tjones@andersonandjones.com

ATTORNEYS FOR TQ CONSTRUCTORS

POYNER SPRUILL LLP

s/ Thomas L. Ogburn III

Thomas L. Ogburn III

N.C. State Bar No. 23415

301 South College Street, Suite 2300

Charlotte, NC 28202

Telephone: 704.342.5250

Facsimile: 704.342.5264

Email: togburn@poynerspruill.com

ATTORNEYS FOR DEFENDANT ENVIRO AGSCIENCE, INC.